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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ECI Construction, Inc.

File: B-250630

Date: October 9, 1992

Eric A. Bretzel, for the protester.
Stephen J. Gary, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

A proposed awardee's failure to include required information with its bid concerning its competency to perform the contract involves the issue of the awardee's responsibility. An affirmative determination of responsibility is a prerequisite to any award and the General Accounting Office will not review such a determination absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation were misapplied.

DECISION

ECI Construction, Inc. protests the proposed award of a contract to Pro Construction Co. under invitation for bids (IFB) No. N62470-91-B-1103, issued by the Department of the Navy for additions to warehouse and retail exchange buildings at Cherry Point, North Carolina. ECI essentially challenges the acceptability of Pro's bid.

We dismiss the protest.

The IFB as issued included instructions which, among other things, requested bidders to submit a completed IFB Appendix A with their bids. The appendix, entitled "Contractor's Qualifications and Experience," concerned matters such as length and type of construction experience, and qualifications for performing the contract. When bids were opened on September 29, 1992, Pro was determined to be the low bidder. According to ECI, however, Pro failed to include a completed Appendix A with its bid, and Pro's bid therefore should be rejected as nonresponsive.

Responsiveness concerns whether a bidder has unequivocally offered to provide or perform services in accordance with the solicitation; a nonresponsive bid must be rejected. Atlantic Co. of Am., Inc., B-241697, 91-1 CPD ¶ 49. Not all

information requested with a bid involves responsiveness. Instead, the information may relate to bidder responsibility--that is, the bidder's ability to perform the contract. Id. This type of information may be furnished up to the time of award. Id.; Southern Ambulance Builders, Inc., B-236615, Oct. 26, 1989, 89-2 CPD ¶ 385.

The qualification data requested here, relating to the bidder's competency, clearly does not affect a bidder's performance obligation under the contract; rather, the information concerns bidder responsibility--that is, the ability to perform the work. Consequently, Pro's failure to furnish this information with its bid by bid opening did not render its bid nonresponsive; Pro can furnish the information any time up to award. Atlantic Co. of Am., Inc., supra. Although the solicitation stated the qualification data were to be submitted with the bid, an agency cannot change a matter of bidder responsibility into one of responsiveness. Aviation Specialists, Inc.; Aviation Enters., Inc., B-218597; B-218597.2, Aug. 15, 1985, 85-2 CPD ¶ 174.

In any case, ECI's protest is premature. The record indicates that the Navy received several bids, including the protester's, and is currently evaluating them; an award decision has not yet been made. Protests that merely anticipate allegedly improper agency action are speculative and premature. General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 ¶ 512.

The protest is dismissed.



John M. Melody
Assistant General Counsel